

# REMARKS

Claims 33-61 are pending in the application.

Claims 33-55 stand rejected under 35 USC 112, second paragraph, because in claims 33 and 45 the language “at all points through said thickness” was believed to be vague and indefinite. Claims 33 and 45 have been clarified by restating the same limitation in other words; “extending through a center of said respective first hole along an entirety of said thickness hole along an entirety of said thickness.” It is anticipated that this language overcomes the rejection.

Claims 33-36, 38, 39, 45-47, 49, 50, 57 and 60 stand rejected under 35 USC 102(b) as anticipated by Esser. The Examiner asserts that in Esser “the axes of the first set can be chosen such that they extend between and non-parallel relative to the central axes of the second plurality.” However, the fact that axes *can be chosen* is not the legal standard for supporting an anticipation rejection. As the Federal Circuit recently stated in *Net MoneyIN Inc. v. VeriSign Inc.*, 88 USPQ2d 1751 (Fed. Cir. 2008),

In order to demonstrate anticipation, [it must be shown] “that the four corners of a single, prior art document describe every element of the claimed invention.” *Xerox*, 458 F.3d at 1322 (quoting *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 [54 USPQ2d 1673] (Fed. Cir. 2000)). This statement embodies the requirement in section 102 that the anticipating invention be “described in a printed publication,” and is, of course, unimpeachable. But it does not tell the whole story. Because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. §102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements “arranged as in the claim.” *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 [220 USPQ 193] (Fed. Cir. 1983).

Therefore, the Examiner’s argument that the axes “can be chosen” is improper, especially when Esser fails to offer a teaching in which such axes are *actually chosen*. Esser does not disclose within its four corners all the elements “arranged as in the claims.”

In addition, in the Examiner's Response to Arguments, the Examiner has also stated that "depending on the viewing plane, the central axes in the head [of Esser] could appear to be interleaved." Yet from Fig. 18, the distal row appears to be longitudinally divergent from the proximal row. Also, from Fig. 21, all holes in the head portion appear to be oriented in the same plane. Again, Esser within its four corners fails to provide the teaching for the claimed interleaving of holes.

Claims 42, 43, 53, 54, 56 and 59 stand rejected under 35 USC 103 as unpatentable over Esser in view of Talos (and further in view of Boucher). First, for reasons advanced above in response to the anticipation rejection, Esser fails to teach or suggest limitations of the claims. Second, Esser teaches using the plate and screw together in a compressive manner to reduce and fixate bone fragments. (Col. 6, lines 35-38) There is no incentive within the references to rigidly attach the screws to the plate, as such alters (and possibly eliminates) the compressive force between the plate and bone that Esser applies to create the reduction of the fracture; once the screw heads are attached to the plate no additional compression can be applied, possibly resulting in incomplete fracture reduction. Thus, such a construct is apparently contrary to the teaching of Esser. (In the presently claimed invention there is no requirement that the plate and fasteners reduce the fracture; the fracture may be reduced manually and then the plate and fasteners can maintain the reduction and support particular aspects of the bone.)

The remaining claims are also allowable for the reasons advanced above.

In light of all of the above, it is submitted that the claims are in order for allowance, and prompt allowance is earnestly requested. Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David S. Jacobson', written in a cursive style.

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